

HOUSE BILL 1908

By McManus

AN ACT to amend Tennessee Code Annotated, Section
65-21-105, relative to municipally or cooperatively
owned utility or telephone poles.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 65-21-105, is amended by deleting the section in its entirety and by substituting instead the following:

§ 65-21-105

(a)

(1) All municipally owned utilities operated pursuant to § 7-52-103, or any other public or private act, and all rural cooperatively owned utilities doing business pursuant to the authority of title 65, chapter 25, or title 48, chapter 53, shall allow telecommunications service providers, as defined by chapter 4, part 1, of this title and cable operators, as defined in § 602 of the Federal Cable Policy Act of 1984, codified in 47 U.S.C. § 522, to make pole attachments, as defined by 47 U.S.C. § 224 (a)(4), at just, reasonable and non-discriminatory cost based rates, terms and conditions pursuant to negotiated or arbitrated agreements. Such pole attachments may be denied only where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, if those limitations cannot be remedied by rearranging, expanding or otherwise reengineering facilities at the cost, reasonable and actual, of the telecommunications service provider or cable operator requesting the pole attachment.

(2) A municipally or cooperatively owned utility shall apportion the costs of providing usable space required for each entity, but the costs of any relocation of existing users shall be borne by the entity or entities creating the necessity for such relocation including the owner of the facilities.

(3) No municipally or cooperatively owned utility shall request, require or receive any in-kind payment in exchange for or as a condition to an agreement for pole attachments.

(b)

(1) Upon receiving a request for a pole attachment agreement, the municipally or cooperatively owned utility may negotiate and enter into a binding agreement with the requesting telecommunications service provider, or cable operator.

(2) Any party negotiating an agreement under this section may, at any point in the negotiation, ask the Tennessee regulatory authority ("the authority") to participate in the negotiation and to mediate any differences arising in the course of the negotiation.

(3) During the period from the thirtieth to the ninetieth day, inclusive, after the date on which the municipally or cooperatively owned utility receives a request for negotiation, the other party to the negotiation may petition the authority to arbitrate any open issues by filing a petition with supporting information, served on the other party, describing:

(A) The unresolved issues;

(B) The position of each of the parties with respect to those issues; and

(C) Any other issue discussed and resolved by the parties.

(4) The non-petitioning party to a negotiation pursuant to this section may respond to the other party's petition and provide such additional information as it desires within fourteen (14) days after the authority receives the petition.

(5) The authority shall limit its consideration of any petition to the issues set forth in the petition and in the response, if any is filed. The authority may require the parties to provide any additional information necessary to reach a decision on the unresolved issues and, upon the unreasonable failure to provide such information in a timely manner by either party, the authority may proceed on the basis of the best information available to it from whatever source derived.

(6) The authority shall resolve all issues properly presented for arbitration within one hundred twenty (120) days from the date of its receipt of the petition and approve or reject the agreement within thirty (30) days following its final submission. The authority may reject the agreement in whole or in part only on the basis the agreement, or any portion of the agreement, is unjust, unreasonable, or results in discrimination against a telecommunications service provider or cable operator that is not a party to the agreement. Unless the parties agree to extend the time for the authority's consideration, the agreement shall be deemed approved if the authority fails to approve or reject the agreement within the time specified by this subdivision (b)(6).

(7) In the event a telecommunications service provider or cable operator delivers written notice of its intent to renew its pole attachment agreement to the utility, the parties' respective rights and obligations under any existing agreement shall remain in full force and effect until the parties enter into a renewal or successor agreement by negotiation or arbitration as prescribed in this section, except to the limited extent any terms under such existing agreement are not

unjust, unreasonable, or discriminatory as may be determined by the authority pursuant to a request for relief by an aggrieved party to the existing agreement.

(8) The authority shall make a copy of each agreement approved pursuant to this section available for public inspection and copying within ten (10) days after the agreement is approved. The authority may charge a reasonable and non-discriminatory fee to the parties to the agreement to cover the costs of approving and filing the agreement.

(c)

(1) A municipally or cooperatively owned utility shall provide no less than sixty (60) days' written notice prior to removal of facilities or termination of any pole attachment agreement which arises out of a breach of a rate, term, or condition.

(2) A municipally or cooperatively owned utility shall not impose requirements or conditions upon overlapping activities of a telecommunications service provider or cable operator.

(3) Nothing in this section shall be construed to rescind, impair or affect any contracts in effect before the effective date of this act, and shall only apply to contracts entered into, or renewed on or after the effective date of this act.

(4) This section does not constitute certification as defined by federal law and shall not apply to any pole attachment regulated by the Federal Communications Commission under § 224 of the Federal Communications Act of 1934, codified in 47 U.S.C. § 224.

(5) At any time, upon its own complaint or the complaint of any interested party, the Tennessee regulatory authority shall have the authority and

jurisdiction, after notice and a hearing, to enforce this section by appropriate order or rule.

SECTION 2. This act shall not modify, impair, supercede or authorize the modification, impairment or supersession of § 7-59-316, as enacted by Chapter 932, § 17 of the Public Acts of 2008.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of the act are declared to be severable.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.